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(40)

AN EXAMINATION
OF THE
PRINCIPLES AND POLICY
OF THE
BENGAL TENANCY BILL.

I PURPOSE to examine the principles and policy of the Bengal Tenancy Bill with reference to—

1st—The rights vested in the proprietors of the soil under the Permanent Settlement ; and

2nd—The power which Government reserved to itself to enact, from time to time, regulations for the protection and welfare of the dependent talookdars and the cultivators of the soil.

I.—The rights vested in the proprietors of the soil under the Permanent Settlement.

And firstly, of the first. What are the rights vested in the proprietors of the soil under the Permanent Settlement ? is a question to which many and various answers have been recently returned by a host of able and learned persons. But it is no small satisfaction to me to find that the view of the subject for



which I have contended in two articles contributed by me to the *Calcutta Review* for October, 1880, and for April, 1883, is fully borne out by no less an authority than the Marquis of Hastings, Governor-General of India, himself a host. In a Resolution of Government, dated the 1st August, 1822, Lord Hastings observed :—

“The whole foundation of our Bengal Revenue Code resting on the recognition of private property in the soil, and the relinquishment by Government of any right in land occupied by individuals beyond that of assessing and collecting the public revenue, it may be assumed that the sudder malguzar, if admitted to engage as proprietor, was intended to be vested, subject to the payment of Government revenue, with the absolute property of all land in which no other individual possessed a fixed and permanent interest and which may have been held and managed by such malguzar, his representatives or assignees. Lands occupied by contract cultivators, accounting for their rents immediately to the sudder malguzar, were thus to be regarded as the full property of such malguzar, subject to the stipulations of the contract. It was also doubtless intended to recognize the full property of the zemindars in unclaimed waste lands lying within the limits of their mehals.”—(Bengal Revenue Selections, Vol. III, p. 340.)

Lord Hastings, it is well-known—to everyone, who, from a sense of duty or an enlightened curiosity, has deemed it worth his while to study the history of British land-revenue administration in India—had no partiality for the zemindary system as established in Bengal. Accordingly, his Lordship’s statement of the law with



respect to the property in the soil in Bengal is to be read in the light of a concession extorted from an ingenuous opponent of the Bengal zemindary system by the irresistible strength of the case for the Bengal zemindars. *Contemporanea expositio est optima et fortissima in lege* (2 Coke's Inst.—11); and hardly more than twenty years had elapsed since the formation of the Permanent Settlement, when Lord Hastings, then Lord Moira, became Governor-General of India.

But before proceeding to make good against the thorough-going supporters of the Bengal Tenancy Bill in the Supreme Council, Lord Hastings' statement regarding the absolute property of the Bengal zemindars, as well in the lands tilled by *pykash* ryots, or contract cultivators, as in the unappropriated waste lands lying within the ambit of their zemindaries, I deem it needful to supply an important omission in the Hon'ble Sir Steuart Bayley's quotation from Lord Hastings' Revenue letter from Bengal, dated 7th October, 1815:—

“I feel confident,” says Sir Steuart Bayley, “that no one who has carefully studied their notes (meaning the notes of Messrs. Mackenzie and O'Kinealy), and certainly no one who, as I have done, has gone back and studied the original references themselves, can doubt that they have made good their propositions. I will content myself with showing that this view has been also consistently maintained by the Court of Directors and by the Secretary of State.” He then quotes a passage from the Court's letter of the 19th September, 1792, to which I shall afterwards particularly refer, and proceeds as follows:—

“My next quotation is from the Government letter



addressed to the Court of Directors on the 7th October, 1815:—

‘We consider it as a principle equally applicable to all the provinces immediately depending on this presidency, and we believe we might safely add to the whole of India, that the resident ryots* (and recollect that Sir John Shore defined a *resident* cultivator as any one who cultivated the land in the village in which he lived) have, by the Government letter of 1815, an established permanent hereditary right in the soil which they cultivate, so long as they continue to pay the rent justly demandable from them with punctuality. We consider it equally a principle interwoven with the constitution of the different Governments of India, that the quantum of rent is not to be determined by the arbitrary will of the zemindar, but that it is to be regulated by specific engagements, or, in the absence of such engagements, by the established rates of the parganas or other local divisions.

‘With these impressions respecting the rights of the peasantry, such parts of the provisions contained in Regulations XLIV of 1793 and XLVII of 1803 as declare that pattas shall not be granted to ryots or other persons for a term exceeding ten years, appear to be fundamentally erroneous. The natural and obvious tendency of that rule was to limit and restrict those rights which the peasant possessed in a much more extended sense by virtue of the constitution of the country itself.’ ”—(Supplement to the *Gazette of India*, April 21, 1883, p. 214.)



Sir Steuart Bayley gives the latter part of para. 9 and the first part of para. 12, wholly omitting paras. 10 and 11, of the Government letter. Doubtless Sir Steuart Bayley deemed the last-mentioned paragraphs irrelevant to his own purposes ; but they require to be set out in order to give a *complete* view of Lord Hastings' impressions respecting the rights of the peasantry at large and of the zemindars.

"If it were asked," continues the Government letter, "as in fact has been done by your Honourable Court, how the above rights are to be reconciled with the privileges and immunities which it has been the policy of the British Government to vest in the zemindars or other independent proprietors of land, we should answer, that although it may be in some degree a misnomer to say that the right in the soil is vested in the latter, yet we do not discern anything incompatible in the two descriptions of tenure. In other words, we can discover nothing in the rights which we have supposed the ryot to possess at variance with the ideas which are usually attached to the possession and enjoyment of landed property. The cottager in England may have his rights, but they do not necessarily oppugn those which are inherent in the proprietor of the estate.

"In like manner, the zemindar in this country, in holding his estate subject to certain restrictions with respect to the rights of the resident ryots, *does not the less enjoy the power of managing those lands on which no resident ryots are established in any mode he may judge proper*; of collecting the rents of the whole through what channel he may deem best suited to his convenience ; of providing for the



cultivation of waste lands ; of improving the general condition of the estate ; and finally, of enjoying the surplus revenue, whatever it may be, after paying the regulated assessment to Government. Each party has his rights, but rights differing materially in their nature and degree ; both perfectly consistent with each other, so long as avarice and other bad passions do not instigate the zemindar to oppress his ryots, and which, of course, it should be the principal object of our institutions to prevent.”—(Bengal Revenue Selections, Vol. I, pp. 294-5 ; paras. 10 and 11 of Revenue letter from Bengal, 7th October, 1815.)

These *impressions* of Lord Hastings regarding the relative rights of the proprietors of the soil and the peasantry in Bengal are singularly interesting as containing the germ of his Lordship's matured opinion on the subject, which I have quoted above from his Minute, dated the 1st August, 1822,—a Minute which was largely quoted from, and recognized as of paramount authority on the subject in, the Report from the Select Committee of the House of Commons on the affairs of the East India Company, made in 1832.

But to proceed to what concerns us more immediately—the Hon'ble Mr. Ilbert's impression regarding the same subject :—

“All that I can venture to do,” says Mr. Ilbert, “is to state, as briefly as possible, the impression which the main features of the controversy have produced on one to whom the subject is comparatively fresh, and who has endeavoured to approach it with that impartiality which ought to be the characteristic of a well-balanced and ignorant mind.”—(Supplement to the *Gazette of India*, March 3, 1883, p. 282.)



With the highest deference to the hon'ble and learned law-member, I take leave to remark that, however fresh to the subject he may be, the thrice-refined arguments which he has thought fit to employ for the purpose of frittering away solemn legislative declarations touching the proprietary rights of the zemindars are apt to make the disinterested public distrustful of his intellectual impartiality.

Mr. Ilbert admits that the Permanent Settlement was a contract between the Government on the one hand and the zemindars on the other ; but says he, " the ryots were not consulted about the arrangement, and were in no sense a party to it, and according to the most ordinary principles of contract, it could not affect any right which they then had or might thereafter acquire." Doubtless, a contract between two private parties cannot affect the rights of a third, but the question assumes a very different complexion when one of the contracting parties being the sovereign power, and therefore competent to operate upon the rights of third parties, does so operate in favour of the other contracting party. I am merely referring to the opinion which high authorities have expressed regarding the destruction of the rights of third parties by the Permanent Settlement. In my second article on the *Proposed New Rent Law for Bengal and Behar* in the *Calcutta Review* for April, 1883, I quoted the opinion of a distinguished Bengal civilian, Mr. Halhed, the author of a "Memoir on the Land Tenure and Principles of Taxation in Bengal,"—to the effect that the *allodial* rights of the ryots, to use Mr. Halhed's phraseology, were abrogated by the Revenue Code of Lord Cornwallis. And it is interesting to know



that Sir E. Coleboooke took the same view of the subject. In a Minute recorded by him on the 12th July, 1820, Sir E. Colebrooke wrote :—"The errors of the Permanent Settlement in Bengal were two-fold : first, in the sacrifice of what may be denominated the Yeomanry, by merging all village rights, whether of property or occupancy, in the all-devouring recognition of the zemindars' paramount property in the soil ; and secondly, in the sacrifice of the peasantry by one sweeping enactment, which left the zemindar to make his settlement with them on such terms as he might choose to require."—(Bengal Revenue Selections, Vol. III, p. 167.) For my own part, I can find nothing in the rules for the Decennial Settlement, afterwards enacted into Regulation VIII of 1793, to justify this accusation against the authors of the Permanent Settlement. The rights of the Yeomanry were as scrupulously respected as the rights of the lords of Manors, and if the Permanent Settlement was concluded with the Rajah of Burdwan and the Rajah of Nuddea, it was likewise concluded with the village-zemindars of Chittagong and of Sylhet. I gather from a Report written in 1802 by the Collector of Chittagong, in answer to circular interrogatories from Marquis Wellesley, that the *zemindars* of the district in general followed their own ploughs, and were the immediate cultivators of the soil ; and from a letter dated 20th November, 1811, addressed by the Collector of Sylhet to the Board of Revenue, I gather that two-thirds of the proprietors of the soil in this zillah did not pay a yearly revenue to the amount of six rupees each.—(Harington's *Analysis*, Vol. IV, p. 385 ; Bengal Revenue Selections, Vol. I, p. 239.) And when the Bengal zemindary



system was introduced into Benares, I find that ample care was taken to preserve the rights of the "village-zemindars (see Regulation II of 1795, section 17). From all this I think it is only fair to infer that, that in Bengal the rights of the Yeomanry were preserved wherever they existed. And as regards the Bengal peasantry, express provision was made in clause 2, section 60 of Regulation VIII, 1793, to protect the *khud-kasht* ryots in the enjoyment of their right of occupancy. But reserving for the present a detailed discussion of this question, I resume the thread of Mr. Ilbert's arguments :—

"But then it was said," Mr. Ilbert observes, "that at the time of the Permanent Settlement, and as part of the same arrangement, a formal declaration was made declaring the property in the soil to be vested in the zemindars ; that throughout the Regulation (? Regulations) of 1793, which confirmed and gave effect to the Permanent Settlement, the zemindars are described as the 'proprietors' or 'actual proprietors' of the soil, and that this declaration and description are inconsistent with the notion of proprietary rights in the land being vested in any other class of persons," *otherwise than through the zemindars*, it should be added, in order that the case for them may be put as correctly as possible within such small compass. "As to the use of the term 'proprietor,' no serious argument can be based upon it. I have heard of the magic of property. But I never understood that there was any such magic in the phrase 'proprietor' as to wipe out any rights qualifying those of the person to whom the phrase was applied ; and it would be specially difficult to show that it had any such effect in the



Regulation (? Regulations) of 1739.”—(Supplement to the *Gazette of India*, March 3, 1883, pp. 282-3.)

It is a very curious illustration of Carlyle's theory of ‘unconsciousness,’ that the hon'ble and learned law-member of the Supreme Legislative Council of India should be unaware of the magical force of the phrase ‘proprietor,’ when solemnly pronounced by the sovereign law-maker. The fact of the matter, however, is, that such rights as existed at the time of the Permanent Settlement, qualifying the proprietary rights of the zemindars, independent talookdars, and other actual proprietors of the soil were carefully saved by the great Settlement Regulation, No. VIII of 1793, the fifty-second section of which enacted that the actual proprietor was to let, in whatever manner he thought proper, the *remaining* lands of his estate (*remaining*, that was to say, over and above the lands in the possession of dependent talookdars and mocarrarydars, who derived their titles from the actual proprietor), *subject to certain prescribed restrictions*, which restrictions as well as the colon connected with them, I may be permitted to hope, I have already discussed at sufficient length in the articles contributed by me to the *Calcutta Review*.

“In the first place,” proceeds Mr. Ilbert, “the term as applied to land has no technical meaning in English law, and if you were to ask an English lawyer what were the rights in the soil of a proprietor of land, he would probably tell you that you were using loose and popular language, and would beg you to make your meaning more precise and clear.”—(Supplement to the *Gazette of India*, March 3, 1883, p. 283.)

Now, the term ‘proprietor,’ as applied to land, having no *technical* meaning in English law, it behoves



an English lawyer to construe the term, when applied to land, in its *popular* meaning. "The first and most important rule of construction," writes Mr. Maxwell, "is, that it is to be assumed in the first instance, that the words and phrases are used in their technical meaning, if they have acquired one, and in their popular meaning, if they have not," &c.—(Maxwell's *Interpretation of Statutes*, p. 2.) An English lawyer would, therefore, construe the term 'proprietor,' as used in the Regulations of 1793, in its popular meaning. The popular meaning of 'proprietor' is thus given in Dr. Ogilvie's *Student's English Dictionary*:—"An owner, the person who has the legal right or exclusive title to anything, whether in possession or not." That is the meaning which an English lawyer would assign to the term 'proprietor,' as applied to land in the Bengal Revenue Code. Again, if you were to ask an English lawyer what were the rights in the soil of a proprietor of land, he *would*, probably, beg you to make your meaning more precise and clear; but when you had informed him that the proprietor in question was one of a class of "actual proprietors of land," respecting whom the Legislature of the country had declared, that "no alteration will be made in the assessment which they have respectively engaged to pay, but that *they and their heirs* and lawful successors will be allowed to hold their estates at such assessment for ever" (section 4, Regulation I, 1793), he would at once tell you that the rights in the soil of the proprietor in question were equivalent to those of the owner of what in English law is called an estate in *fee-simple*, subject to the payment of a fixed land-tax or tribute. He would, however, probably take care to add, that the rights in the soil of the owner of what in English law is termed



an estate in fee-simple varied considerably under various systems of law ; and if you, thereupon, further informed him that the rights of the proprietor in question were regulated by an enactment, Regulation VIII of 1793, which was passed by the Legislature on the same day on which the aforesaid declaration, among other matters, was likewise enacted into a Regulation, No. 1 of 1793, he would peruse both Regulations, and then tell you that, under the first-mentioned Regulation, the proprietor in question was entitled to certain tributes, rents, and services from several descriptions of subordinate "tenure-holders," and that he was at liberty to let, like an absolute proprietor as he was, the *remaining* lands of his estate, in whatever manner he judged proper, subject only to certain *prescribed restrictions*. I cannot take upon myself to guess at what an English lawyer, nourished exclusively on *Coke upon Littleton*, would say, but answers, substantially similar to those which I have taken the liberty of putting into the mouth of Mr. Ilbert's hypothetical English lawyer, have been actually returned by English lawyers like Sir Barnes Peacock, Sir Richard Garth, and last, not least, Mr. Field.

"In the next place," observes Mr. Ilbert, "the term was freely applied to the zemindars of Bengal and other persons of the same class in Regulations and other official documents of a date anterior to 1793, and, therefore, could not possibly be taken as indicating, or, to use a technical term, connoting rights created at that date."—(Supplement to the *Gazette of India*, March 3, 1883, p. 283.)

It is excessively difficult to make out the meaning and scope of this argument. To begin with, as there



would be nothing particularly incongruous or absurd in taking the term, as applied to the zemindars of Bengal and other persons of the same class in Regulations and other official documents of a *date anterior to 1793*, as indicating, or for that matter *connoting*, rights created *at that date*, whereas it is clear as the light of noonday that Mr. Ilbert is anxious to bring home to the advocates of the zemindars some glaring absurdity or other, he must be understood to refer by the words "at that date" to the date of 1793. Again, even supposing Mr. Ilbert to refer by these words to the date of 1793, he would at the first blush merely seem to argue that the term, being applied to the zemindars of Bengal and other persons of the same class in official documents of a date anterior to 1793, could not possibly be taken in those documents as connoting rights created in 1793. But as no one ever contended for such an egregiously proleptical construction of those ancient documents, and as the question on the carpet is, what is the true signification of the term as used in the Regulations of 1793, I rather think Mr. Ilbert means to reason from the connotation of the term as used in official documents of a date anterior to 1793, to its connotation as used in the Regulations of 1793. In order to estimate aright the force of this reasoning, it is necessary to take into consideration Mr. Ilbert's view of the legal position of the zemindars in Bengal before 1793.

"Before 1793," says Mr. Ilbert, "the zemindars were, as they are now, the persons responsible to the Government for the payment of the land-revenue in cases where that revenue was not collected directly from the cultivator. The amount of land-revenue which



each zemindar had to pay, and for the payment of which the Government held him responsible, was fixed by contract or arrangement between him and the Government. Such contracts were termed settlements. They sometimes related only to the revenue of a particular year, but it was found in practice more convenient to make them for a term of years. Before 1793, there had been two or three quinquennial settlements,"—by the way, Mr. Harington and every other authority that I have consulted speak of *one* quinquennial settlement only,—“and in 1793 there was in force a decennial settlement, or a settlement for a term of ten years.”—(Supplement to the *Gazette of India*, March 3, 1883, p. 282.)

Mr. Ilbert's argument, if I understand it aright, may be thus stated: Before 1793, the zemindars were treated by the British Government on the footing of mere revenue-contractors, destitute of proprietary rights, or rights of ownership, in the soil, and nevertheless, in Regulations and other official documents of a date anterior to 1793, the term 'proprietor' was freely applied to them and other revenue-contractors; *ergo*, the term as applied to the zemindars in the Regulations of 1793 cannot possibly connote proprietary rights, or rights of ownership, in the soil, assuming that such rights were created in their favour in 1793 by the Regulations of that year. But Mr. Ilbert is apparently not aware, or perhaps the exigency of his argument made him forgetful for the nonce, of the fact that the British Government had, as well from a consideration of the laws and constitution of the country, as from wise reasons of policy, resolved upon recognizing the zemindars as the owners or proprietors of the soil comprised within their zemin-



daries, before the original "rules for the decennial settlement of the public revenue payable from the lands of the zemindars, independent talookdars, and other actual proprietors of land, in Bengal, Behar, and Orissa," were "passed for those provinces respectively on the 18th September, 1789, the 25th November, 1789, and the 10th February 1790."—(See title of Regulation VIII, 1793; and section 2, Regulation I, 1793.) In fact, so far as the British Government in India was concerned, Mr. Shore's Minute on the rights of zemindars and talookdars, dated 2nd April, 1788, and his Minute on the permanent settlement of Bengal, dated 18th June, 1789 (Harington's *Analysis*, Vol. III, p. 228 ; *Fifth Report*, Appendix No. 1), had set at rest the controversy on the subject, and in Regulations and other official documents of a date anterior to 1793, but posterior to the 18th June, 1789, the zemindars were deliberately described by the Government as proprietors of land, as contradistinguished from mere revenue-payers, and the term ' proprietors, as used in these documents, unquestionably connotes proprietary rights, or rights of ownership, in the soil. It is true that the term was likewise applied to the zemindars in sundry official documents of a date anterior to the 18th June, 1789—such, for example, as the Minutes of Mr. Francis ; but it will be found, upon examination, that the term was advisedly used by the authors of those documents as equivalent to ' landowner,' in conformity with the principles of the pro-zemindary party in the British administration in India.

It must, however, be admitted that so long as the revenue payable by the zemindars was liable to periodical variation at the discretion of Government, their proprietary rights were of little value to them; and the



Proclamation relative to the limitation of the public demand upon the lands, dated the 22nd March, 1793, afterwards enacted into a regulation to have force and effect from that date—Regulation I of 1793—made the zemindars in reality, what they had been in name ever since the passing of the original regulations for the decennial settlement, landowners or proprietors of the soil. For this reason, and in this sense, it has been said that the zemindars were *created* landowners by virtue of the Regulations of 1793.

In conclusion, it should be remarked, that Mr. Ilbert does not explicitly declare what he himself understands to be the connotation of the term ‘proprietor,’ as applied to the zemindars, independent talookdars, and other persons of the same class in Regulations and other official documents of a date anterior to 1793. I cannot suppose that he holds the term, as used in those ancient documents, to be destitute of any connotation; and I venture to think that it may be fairly inferred, that he takes it as connoting responsibility for the land-revenue, or, at best, a right to engage for the land-revenue. But the question was much discussed in this country as well as in England before 1793, whether the King, or the zemindar, was the proprietor of the soil; and the term, as applied to the sovereign power, could not possibly be taken as indicating, or connoting, responsibility for the land-revenue, or even a right to engage for the land-revenue.

“And thirdly,” observes Mr. Ilbert, “the term, though, as I have said, it has no technical meaning in England, has acquired a very definite meaning in the settlement literature of British India. It means, in those parts of India which are not permanently



settled, the person who, whatever may be his rights in the soil, has the right of having a settlement made with him—the person, namely, whom, for purposes of land-revenue, and for those purposes only, the Government find it convenient and advisable to treat as owner or proprietor of the land. Such a recognition of course is not inconsistent, and was never supposed to be inconsistent, with the existence of any number of other rights in any number of other persons. All such rights are simply left outstanding. The use of the term ‘proprietor’ in this sense is closely analogous to the use of similar terms in English statute law. Here, for instance, is a definition of ‘owner’ taken from a recent English Act, the Public Health Act of 1875 :— “ ‘Owner’ means the person for the time being receiving the rackrent of the lands or premises in connection with which the word is used, whether on his own account, or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rackrent.’ In this case, the Legislature has said :—We intend to impose certain sanitary duties on the owners of lands and houses. We will not inquire too closely which of several persons ought, as between themselves, to perform those duties. It is sufficient for our purposes to find out who gets the rent ; we will treat that man as owner for the purposes of the Act. We will make him primarily responsible for the performance of duties imposed on owners by the Act, and leave all questions between him and third persons untouched. And this is precisely the policy which the East India Company adopted in Bengal before the date of the Permanent Settlement. They found a number of persons claiming



interests in the soil. Which of those persons had the best claim, as against the others, to be considered true owner of the soil, was a theoretical question of enormous difficulty. But which of those persons ought, for land-revenue purposes, to be dealt with as owners of the soil, and primarily liable for land-revenue accordingly, was a practical question, which admitted of a practical solution. The East India Company settled it in Bengal by selecting the zemindars as the persons to deal with, and they christened them landholders or proprietors accordingly.”—(Supplement to the *Gazette of India*, March 3, 1883, p. 283.)

I observe, in the first place, that it is repugnant to common sense, and contrary to all received canons of construction, to interpret a leading term of the Bengal Revenue Code, by reference to the technical meaning which the term has afterwards acquired in a Revenue Code based upon fundamentally different principles—such as the Settlement Code of the North-Western Provinces. But I may as well point out that in the latter Code the sudder malguzar, or the person with whom the settlement of the land-revenue is made, is not entitled ‘proprietor of the soil’ or ‘actual proprietor of the soil,’ but simply ‘proprietor ;’ and although, in common parlance, the word ‘owner’ is synonymous with the word ‘proprietor,’ I am not aware that in the settlement literature of that part of India which is not permanently settled, ‘proprietor’ and ‘owner’ are used interchangeably as synonymous revenue terms. Again, in the Regulation for declaring the principles of the settlement of the land-revenue in the ceded and conquered provinces, including Cuttack, Puttaspore and its dependencies, the persons with



whom a settlement had been already made are expressly described as "zemindars or other persons acknowledged as *proprietors or possessors of a permanent interest in the mehal*, for which they may have engaged" (Regulation VII, 1822, preamble); and it is prescribed that in making new settlements, "a preference shall be given to the zemindars or other *persons possessing a permanent property in the mehals*" (Regulation VII, 1822, section 3). It is, in fact, quite clear that in the Revenue Code of the non-permanently settled provinces, the term 'proprietor' is used for shortness' sake for the "proprietor or possessor of a permanent interest in the mehal," or the "person possessing a permanent property in the mehals." But "proprietor or possessor of a permanent interest in the mehal" is not equivalent to "proprietor of the soil" or "actual proprietor of the soil," nor is "a permanent property in the mehal" equivalent to "*the property in the soil.*" And it goes without saying that the possession of a permanent property or interest in the mehal by one person is perfectly consistent with the possession of any number of other interests in the mehal, whether temporary or permanent, by any number of other persons.

In the second place, I take leave to protest against the introduction of an English Statute into a discussion relating to the construction of a Bengal Regulation. The question on the carpet being, What is the true meaning of the term 'proprietor' in the Bengal Regulation I of 1793, I cannot conceive anything less pertinent than the statutory interpretation of the term 'owner' in the English Public Health Act of 1875. Besides, a reference to English Statutes is very apt to mystify non - professional Indian audience, as



was well shown by the observations which this very reference to the Public Health Act elicited from the Hon'ble Rajah Siva Prasad. Far be it from me to impute to Mr. Ilbert any design of mystifying his non-professional colleagues in the Council-chamber. But it *does* seem somewhat strange, that if he merely wanted an illustration of the statutory use of the term 'proprietor,' or failing that term, of the term 'owner,' in a non-natural sense, he should have found it necessary to quote the definition of 'owner' in the English Public Health Act of 1875, when a little search into the Indian Statute-Book would have enabled him to find out almost exactly the same definition of the same term,—a definition which would have served his purposes of *illustration* equally well—in the District Municipal Improvement Act of the Bengal Council, No. III of 1864. 'Owner' in the English Public Health Act of 1875 means "the person for the time being receiving the rack-rent of the lands or premises in connection with which the word is used, whether on his own account, or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rack-rent." 'Owner' in the Bengal District Municipal Improvement Act of 1864 means "the person for the time being receiving the rent of land and buildings, or either of them, whether on his own account, or as agent or trustee for any other person, or who would so receive the same if such land were let to a tenant," &c. It has indeed been suggested by an ingenious critic that Mr. Ilbert, having had something to do with the deliberations in the Supreme Council relating to Local Self-Government, must be thoroughly acquainted



with the District Municipal Improvement Act, and that he advisedly drew his illustration by preference from the Public Health Act, in order to keep himself within the letter, if not the spirit, of the rule, that statutes *in pari materia* may be referred to for mutual elucidation, inasmuch as Regulation I of 1793 relating to the limitation of the public revenue may be said to be a Public Wealth Act. But because Mr. Ilbert, in construing the Bengal Regulations, has drawn his arguments and illustrations from the North-Western Provinces, and even from England, that is surely no reason why we should accept such a far-fetched explanation as this, especially when we consider that, throughout the rest of his lengthy reasoning, he has not hesitated to set at naught the most elementary rules for the interpretation of Statutes.

In the third place, I proceed to examine the parallel drawn by Mr. Ilbert between the policy of the British Legislature in the Public Health Act of 1875 and "the policy which the East India Company adopted in Bengal before the date of the Permanent Settlement." But it is well known that, *before the date of the Permanent Settlement*, the East India Company tried a variety of financial experiments in Bengal, and that there was no uniform policy presiding over their administration of the land-revenue of the province, until they adopted the policy which led to the formation of the Permanent Settlement. This last is the policy to which Mr. Ilbert must be understood as referring, because he says, that in accordance with it the East India Company 'christened' the zemindars 'proprietors,' and it was only in their Despatch, dated the 19th September, 1792, in which the Court of Directors em-



powered the Governor - General in Council to render the Decennial Settlement perpetual, that they gave their decisive opinion in favour of treating the zemindars on the footing of 'proprietors.' The policy adopted by the East India Company in relation to the zemindars is thus set forth in para. 20 of the Despatch to which I have just referred:—

“In former despatches we have, on different occasions, conveyed to you our sentiments on that point (meaning the landed rights of the zemindars), though we have also stated that we felt the materials before us to be insufficient for forming a decisive opinion. On the fullest consideration we are inclined to think, that whatever doubts may exist with respect to their original character, whether as proprietors of land, or collectors of revenue, or with respect to the changes which may in process of time have taken place in their situation, there can at least be little difference of opinion as to the *actual* condition of the zemindars under the Mogul Government. Custom generally gave them a certain species of hereditary occupancy, but the sovereign nowhere appears to have bound himself by law or compact not to deprive them of it, and the rents to be paid by them remained always to be fixed by his arbitrary will and pleasure, which were constantly exercised upon this object. If considered, therefore, as a right of property, it was very imperfect and very precarious, having not at all, or but in a very small degree, those qualities that confer independence and value upon the landed property of Europe. Though such be our ultimate view of this question, our originating a system of fixed equitable taxation will sufficiently shew that our intention has not been to act upon



the high claims of Asiatic despotism. We are, on the contrary, for establishing real, permanent, valuable landed rights in our provinces; for conferring that right upon the zemindars; but it is just that the nature of this concession should be known, and that our subjects should see they receive from the enlightened principles of a British Government what they never enjoyed under the happiest of their own."—(Appendix 12 (A) to 2nd Report of Select Committee, 1810.)

Such was the policy of the East India Company in directing a permanent settlement to be formed with the zemindars as proprietors of the soil; to use the words of the Court of Directors,—the Company deemed it consonant to the enlightened principles of a British Government to confer upon the zemindars real, permanent, valuable landed rights, such as they had never enjoyed under the happiest native Government. But according to Mr. Ilbert, the policy pursued by the Company in the matter of the Permanent Settlement was closely analogous to the policy pursued by the British Legislature in the matter of the Public Health Act. Just as the British Legislature has thought it politic to treat every person answering to the description given in the interpretation-clause of the Act as 'owner,' and, by consequence, primarily responsible for the performance of certain sanitary duties, whether or not such 'owner' was in reality the true owner of the lands or premises, so the East India Company, remarks Mr. Ilbert, thought it politic to treat every zemindar as 'proprietor,' and, by consequence, primarily liable for the land-revenue, whether or not such 'proprietor' was in reality the true owner of the lands. It is not an irrelevant distinction to take that in the



one case the 'owner' is liable to perform certain duties, whether he wills it or not, whereas in the other case, the 'proprietor' could not be made liable for the land-revenue, unless he voluntarily accepted such liability. However that may be, Mr. Ilbert, it will be observed, imputes to the East India Company a policy very different from the liberal and enlightened policy set forth in the Court of Directors' Despatch upon the subject. And in *Rajah Lelanund Singh v. The Bengal Government* (6 Moo. I. A., 106), the Judicial Committee of the Privy Council, after adverting to the state of the Bengal provinces, and the mode in which they were administered, previously to the Permanent Settlement, thus described the policy adopted by the East India Company with a view to that settlement:—"It was considered by the East India Company that the first step towards a better system of government and the amelioration of the condition of their subjects would be to convert the *zemindars* into landowners, and to fix a permanent annual *jumma*, or assessment to the Government, according to the existing value, so as to leave to the land proprietors the benefit of all subsequent improvements." According to the Court of Directors and the Judicial Committee of the Privy Council, the policy of the East India Company, in the formation of the permanent settlement with the *zemindars* as the proprietors of the soil, was to convert them into landowners, and to confer upon them real, permanent, valuable landed rights. According to the hon'ble and learned law-member of the Supreme Council, the policy of the East India Company in relation to the *zemindars* in directing the permanent settlement to be made with them, was not to confer upon



them any real, permanent, or valuable landed rights, or for that matter, any *right* at all, but to treat them as 'proprietors' merely for the purpose of saddling them with the *duty* of regularly discharging the land-revenue.

So much for the triad of thrice - refined arguments elaborated by Mr. Ilbert for the purpose of proving that "no serious argument" can be based upon the phrase 'proprietor' as used in the Permanent Settlement Regulations. It is only out of deference to the high authority of the law-member of the Council of the Governor-General of India, that I have thus minutely analysed each of these arguments. If I had to deal with them simply upon their own merits, I should have thought it quite sufficient to make two observations of a general nature applicable to all three of them. *First*, the contention on the part of the zemindars being, as stated by Mr. Ilbert himself, that in the Regulations of 1793 they are described as the 'proprietors' or 'actual proprietors' of the soil, and that it is explicitly declared in those Regulations that the property in the soil was vested in them, from which description and declaration *taken together*, it follows that they became landowners by virtue of the said Regulations, whatever their legal status may have been under the native Governments; it is no answer to say, as Mr. Ilbert does, that the description, *taken by itself*, does not warrant such conclusion. *Secondly*, Mr. Ilbert's quarrel is with the connotation of the noun 'proprietor,'—he apparently admits that the adjective 'proprietary' imports ownership or *dominion*; thus, for instance, he renders "*absolutum et directum dominium*" into "absolute and direct ownership or



proprietary right" (Supplement to the *Gazette of India*, March 3, 1883, p. 284); and it will be recollected that he represents the advocates of the zemindars as contending that the description and declaration referred to above "are inconsistent with the notion of *proprietary rights* in the land being vested in any other class of persons." Now, "proprietary rights" are expressly predicated of the zemindars in more than one place in the Regulations of 1793. Thus, to take the instances that first occur, section 9, Regulation I, 1793, says that zemindars "are privileged to transfer to whomsoever they may think proper, by sale, gift, or otherwise, *their proprietary rights*, in the whole, or any portion, of their respective estates," &c.; and clause second, section 5, Regulation VIII, 1793, speaks of "talookdars who purchased their lands by private or at public sale, or obtained them by gift from the zemindar,.....and who received deeds of sale, or gift of such land, from the zemindar, or sunnuds from the khalsa, making over to them *his proprietary rights* therein."

Speaking of the term "proprietor of the soil" as applied to the zemindars, the Hon'ble Mr. Evans observes :—

"There has been much confusion arising out of the use of the term 'actual owner' or 'actual proprietor of the soil.' In many zemindaris there is a zemindar, a patnidar, a durpatnidar, and under them a *jangul-buri*, or an occupancy raiyat. Each one of these is an actual owner or proprietor of such interest as he has in the soil."—(Supplement to the *Gazette of India*, April 21, 1883, p. 860.)

The confusion connected with the phrase "actual



proprietor of the soil,"—the phrase "actual owner," of course, does not occur in the Regulations,—is not in the least degree *objective*, but purely *subjective*. Thanks to the policy of expropriation of landlords which has found favour with the powers that be, many ingenious attempts have been lately made to involve in inextricable confusion the plain meaning of the plain English word 'proprietor,' as well as of its synonym, 'owner,' which, though not used in the Regulations, has been, very inconveniently for the partisans of that policy, deliberately applied to the zemindars in authoritative official documents, not to speak of judicial decisions. But the framers of the Permanent Settlement Regulations carefully observed their own rule with respect to the drafting of regulations,—“that the same designations and terms are to be applied to the same descriptions of persons and things, in order that rights, property, tenures, privileges, &c., and generally all persons and things may be uniformly described by the same designations and terms throughout the *judicial** Code” (section 14, Regulation XLI, 1793); and he who runs may read, and never need be at a loss for the meaning of the term “proprietor of the soil,” as clearly, distinctly, and uniformly used throughout the Cornwallis Code. Mr. Evans apparently seeks to confound *the* proprietor of the soil with *a*

* The phrase 'judicial' desiderates a word of explanation. The Legislative Department of Government was in those days denominated the "Judicial Department;" and it was prescribed by section 11, Regulation XLI, 1793, that "all regulations affecting in any respect the rights, persons or property of the natives, or any individuals who may be amenable to the Provincial Courts of Judicature, shall be recorded in the *judicial department*, and there framed into a regulation, and printed and published," as directed in the said Regulation.



proprietor of *some* interest in the soil, or, to give his exact words, "an actual owner or proprietor of such interest as he has in the soil." He skilfully prepares the ground for this confusion by speaking of the term "actual owner," as if it were identical with the term "actual proprietor of the soil." "There has been much confusion," says he, "arising out of the use of the term 'actual owner' or 'actual proprietor of the soil.'" He proceeds to show that the term "actual owner" is applicable alike to "a zemindar, a patnidar, a durpatnidar, and under them a *jangulburi*, or an occupancy raiyat." "Each one of these," he opines, "is an *actual owner* or proprietor of such interest as he has in the soil." He would lead you thence to infer that a zemindar, in so far as he is an "actual owner" or "actual proprietor of the soil,"—the two terms having been premised by him to be identical,—is in the same predicament with a patnidar, a durpatnidar, and "a *jangulburi* or an occupancy raiyat." Reserving for the present the consideration of the legal position of a patnidar and of a durpatnidar, as well as of that personage unknown to the land-tenures of Bengal—"a *jangulburi* raiyat," it may be admitted that an occupancy ryot is "an *actual owner* or proprietor of *such* interest as he has in the soil;" but, until the expropriation of zemindars is completely effected, the term "actual proprietor of the soil" cannot with any propriety be predicated of an occupancy ryot. As I have already had occasion to point out, there is all the difference in the world between the proprietor of the soil and a proprietor of an interest in the soil. Doubtless an occupancy ryot, thanks to a benevolent legislature and a benevolent judiciary, benevolent at the



expense of the zemindars, according to the dictum of Sir Barnes Peacock,—no mean authority on the subject,—doubtless an occupancy ryot has, under Act X of 1859 and the ruling in the Great Rent Case, a substantial interest in the soil ; but it is a strictly limited interest, liable to determination for, amongst other reasons, non-payment of rent, alienation without the landlord's consent (except in the very rare* cases where there is a well established local custom validating such alienation), or conversion of the soil to other than purely agricultural purposes ; and the interval is very wide indeed between *such* an interest in the soil and that property in the soil which was vested in the zemindar by the Regulations of 1793, and which still subsists in its integrity in every bigah of the soil of his zemindary in which he has not permitted the growth of a right of occupancy. An *interest* in the soil is an indefinite fractional part of the property in the soil, conceived of as an integral entity, out of which any number of interests may be carved ; the sum-total of such interests constituting the property in the soil. The proprietor of the soil is the person in whom the property in the soil is vested. The zemindar is *the* proprietor of the soil, in whom the property in the soil is vested (Preamble to Regulation II, 1793) ; it can only conduce to confusion to call

* The cases are really very rare. Adverting to the assertion of the partisans of the policy of free trade in ryots' holdings, that in many parts of the country occupancy rights have already become transferable by local customs, Babu Nuffur Chandra Bhatta, First Subordinate Judge of the Twenty-four Pergunnahs, says :—" But of the alleged custom I have not been able to see *one* instance in which it was proved in my experience of 18 years in the Districts of Nuddia, 24-Pergunnahs, Moorshedabad, Backergunge and Dacca." (*The Principles of the Bengal Tenancy Bill Legally Examined*, p. 29.)



the zemindar, in common with an occupancy ryot, "a proprietor of such interest as he has in the soil." Surely, confusion's cure lives not in confusions.

Then as regards "a patnidar, a durpatnidar, and under them a *jangulburi* raiyat." I must remark at the outset that *jangulburi*, or rather *jungleboory*, is a word of art appropriated to talooks or intermediate tenures, and seldom or never applied, even in popular parlance, to the holdings of ryots proper; and the reason for this usage will appear upon a little reflection on the nature of the tenure. The nature of the tenure is fully described in section 8, Regulation VIII, 1793, which runs as follows :

"Talookdars also whose tenure is denominated *jungleboory*, and is of the following description, are not considered entitled to separation from the proprietors of whom they hold. The pottahs granted to these talookdars, in consideration of the grantee clearing away the jungle and bringing the land into a productive state, give it to him and his heirs in perpetuity, with the right of disposing of it, either by sale or gift, exempting him from payment of revenue for a certain term, and at the expiration of it, subjecting him to a specific assul jumma, with all increases, abwabs, and mathoots imposed on the pergunnah generally; but this for such part of the land only as the grantee brings into a state of cultivation; and the grantee is further subject to the payment of a certain specified portion of all complimentary presents and fees, which he may receive from his under-tenants, exclusive of the fixed revenue. The pottah specifies the boundaries of the land granted, but not the quantity of it, until it is brought into cultivation."



The business of bringing land covered with jungle into a productive state, presupposes capital and the ability to wait for distant returns to the outlay of capital, not to speak of the risks incurred. It is, therefore, a business which a ryot, properly so called, cannot undertake on any considerable scale; and accordingly the usage of landlords and the practice of conveyancers in Bengal have confined the application of the term 'jungleboory' to talooks or intermediate tenures of the kind described in section 8, Regulation VIII, 1793. However this may be, the holder of a jungleboory tenure, it will be observed, is, to most practical intents and purposes, the owner or proprietor of the lands which he has brought into cultivation, subject only to certain money-payments, in the shape of revenue or rent and otherwise, to the superior proprietor, who has divested himself by the grant of all other interest in the lands. This is still more true of the holder of a *patni* talook, "the character of which tenure is, that it is a talook created by the zemindar to be held at a rent fixed in perpetuity by the lessee and his heirs for ever."—(Preamble to Regulation VIII of 1819.) A *patni* talook is capable of being transferred by sale, gift or otherwise at the discretion of the holder; and in case of an arrear of rent occurring, it is not liable to be cancelled for the same, but the tenure may be brought to sale by public auction, and the holder of the tenure is entitled to any excess in the proceeds of such sale beyond the amount of the arrear of rent due to the zemindar: *patni* talookdars possess the right of letting out the lands composing their talooks in any manner they may deem most conducive to their interest, and they may create under-tenures

upon terms precisely similar to those upon which they hold their own tenures, such under-tenures going by the name of *durpatni* talooks (sections 1 and 3, Regulation VIII, 1819). But neither the jungleboory talookdar nor the patnidar (nor, of course, the *durpatni*-dar) is designated in the Bengal Regulations as the "proprietor of the soil," for the plain reason that the entire property in the soil or the sum total of interests therein is not vested in either of them, the proprietor of the soil, when he created the tenures, having in each case reserved to himself as landlord a substantial interest in the soil, in the shape of rent issuing out of, and secured by, the soil, not to speak of other rights, such as the right to a fee upon alienation. It is true that when the proprietor of the soil has disposed of his lands by way of *patni* talook or other permanent transferable tenure at a fixed rent, he has, as regards the lands so transferred, parted with the bulk of his property therein ; but there is still a residue left in him as the landlord, and according to the terminology of the Bengal Regulations—a terminology well fitted for preventing confusion—he continues to be designated as the proprietor of the soil. It is interesting to note the resemblance in this respect between the terminology of the Bengal Regulations and the terminology of the Roman law. In the Roman law, permanent transferable tenures of land or houses, at a fixed rent, were known by the name of 'emphyteusis.' And the question was much discussed by the Roman lawyers, whether the 'emphyteuta,' or the person to whom a grant of land or houses had been made by way of 'emphyteusis,' was the 'dominus' or proprietor of the land or premises. The question was settled by a

constitution of the Emperor Zeno, which declared that the contract of 'emphyteusis' was not to be confounded with an out-and-out sale, but that it was a contract of a special nature resting upon agreements of its own. Accordingly, in the Roman law the 'dominus' or proprietor of land or houses, even after he had granted them by way of 'emphyteusis,' continued to be designated as the 'dominus' or proprietor of the same, the grantee going by his appropriate name of 'emphyteuta.'—(See Hunter's *Roman Law*, p. 255 *et seq.*) Similarly, according to the Bengal Regulations, the proprietor of the soil, even after he has granted his lands by way of jungleboory, patni, or other permanent transferable tenure at a fixed rent, continues to be designated as the "proprietor of the soil," the grantee going by his appropriate name of jungleboory talookdar, patnidar, moccurraydar, and so on to the end of the long catalogue.

Adverting to the contention of the zemindars that the provisions of the Bengal Tenancy Bill would infringe the rights vested in them as the proprietors of the soil by the Bengal Regulations, His Excellency the President of the Supreme Council said :—

" Because the zemindars have been called proprietors and owners of the soil, it has been contended that it follows necessarily that they have a full and absolute right in the property, and that no one else has any interest in the soil at all. On the meaning of the words 'proprietors and owners' this question very largely depends. My hon'ble friend Mr. Kristodas Pal, and still more Raja Siva Parsad, if I followed him, appeared to contend that no man could be called a proprietor who had not the most absolute and complete



right to do in every respect whatever he pleased with the land. That certainly is not the notion which we entertain of an owner or proprietor of land in England. A great deal has been said about the zemindars having been made proprietors after the English fashion. If that is so, then I must point out that the vast majority of land in England is held by people who are owner in only a limited sense, who cannot sell or mortgage the land without the sanction of somebody else, and who very often cannot sell or mortgage at all. And it is quite a mistake to suppose, that because a man who has a limited interest in land is called a proprietor and owner, therefore he becomes an absolute proprietor and owner, and is given an absolute fee-simple right to the land to do what he likes with it. So far as I am able to judge by all the evidence which I have seen on this complicated and much-contested question of land-tenures in India, I am led irresistibly to the conclusion that there never has been in India an absolute owner of the soil in whom every possible kind of right of property is vested. It appears to me indisputable that the raiyats and cultivators of the soil have always had, or at least a great proportion of them have always had, rights in the soil more or less perfectly secured to them according to the circumstances of the time and the position of the parties; that rights of this description have been at all times recognized; and that they have never been abandoned by those who believed that they possessed them. And it must be remembered that, if it be true that ninety per cent. of the tenants in Bengal are occupancy tenants now, or, to take the lower estimate which I have seen put forward upon good authority, that seventy per cent.



only of them are now occupancy tenants, it is perfectly clear, at least as regards nine-tenths or seven-tenths of the landlords of Bengal, that they are not absolute owners in the sense in which the words have been used by the opponents of the Bill in the course of this discussion."—(Supplement to the *Gazette of India*, April 21, 1883, p. 932.)

In the first place, I beg most respectfully to say that although the hon'ble and learned law-member, in the skilfully-reasoned speech with which he introduced the Bill, made it appear that the contention of the zemindars is founded mainly, if not solely, upon the use of the term "proprietor of the soil" in the Regulations relative to the Permanent Settlement, the plea of the zemindars in favour of their vested rights is not based on isolated phrases or passages, or on the use of any particular term, in the Permanent Settlement Regulations, but it is based, as it should be based, on the whole of those Regulations taken together.

In the second place, I beg most respectfully to observe that, according to the spirit and the express provisions of the Regulations relative to the Permanent Settlement, the persons with whom the settlement was made were, subject to certain prescribed restrictions, vested with the absolute property of the lands comprised in their estates, of which they had not, before the date of the settlement, disposed by way of dependent talooks or other descriptions of tenure.' To take Mr. Austin's definition of 'dominion' or absolute property, it is "a right over a determinate thing, indefinite in point of user, unrestricted in point of disposition, and unlimited in point of duration."—(Jurisprudence, ii, p. 477; cf. iii, p. 2.) The right of the zemindars,



independent talookdars, and other actual proprietors of land, with whom the settlement was concluded, is, 1stly, *unlimited in point of duration*.—Article 3 of the Proclamation relative to the Permanent Settlement, afterwards enacted into section 4, Regulation I, 1793, says:—"They and their heirs and lawful successors will be allowed to hold their estates at *such* assessment (meaning the revenue assessed under the Regulations for the Decennial Settlement) for ever." It is, 2ndly, *unrestricted in point of disposition*.—Article 8 of the Proclamation relative to the Permanent Settlement, afterwards enacted into section 9, Regulation I, 1793, says:—"That no doubt may be entertained, whether proprietors of land are entitled, under the existing Regulations, to dispose of their estates without the previous sanction of Government, the Governor-General in Council notifies to the zemindars, independent talookdars, and other actual proprietors of land, that they are privileged to transfer to whomsoever they may think proper, by sale, gift, or otherwise, their proprietary rights, in the whole, or any portion, of their respective estates, without applying to Government for its sanction to the transfer, and that all such transfers will be held valid, provided that they be conformable to the Mahomedan or the Hindu laws (according as the religious persuasions of the parties to each transaction may render the validity of it determinable by the former or the latter code), and that they be not repugnant to any Regulations, now in force, which have been passed by the British administrations, or to any Regulations that they hereafter enact." It is also, 3rdly, *indefinite in point of user*.—Section 52, Regulation VIII, 1793, says:—"The zemindar, or other



actual proprietor of land, is to let the *remaining* (remaining, that is to say, over and above the lands held by dependent talookdars and other 'tenure-holders') lands of his zemindary or estate, under the prescribed restrictions, in whatever manner he may think proper," &c.; the right or user is perfectly *indefinite*, being subject only to certain definite restrictions prescribed in the Regulation, and the nature of which I shall consider more particularly before I bring this examination to a close. It is in this sense of the term "absolute property," that high authorities have declared that the proprietor of the soil under the Bengal Regulations is the *absolute proprietor* of his lands; and it is in this sense, I venture to think, that the Marquis of Hastings, in particular, has observed, that "under the Bengal Revenue Code the sudder malguzar was intended to be vested with the *absolute property* of all land in which no other individual possessed a fixed and permanent interest."—(Bengal Revenue Selections, Vol. III, p. 340.) Absolute property, in the sense of a right of property not subject to any restriction whatever, has only a notional existence; it is not known to any system of positive law: even if the law does not expressly prescribe any restriction, the most plenary right of property must be enjoyed subject to the implied restriction—*sic utere tuo ut alienum non lædas*.

In the third place, it is most respectfully submitted that what the advocates of the zemindars mean by saying that the latter were made proprietors after the English fashion, is that they were made landowners, as contradistinguished from mere revenue-payers, such as Mr. Ilbert would make out that they have always been, and are to this day. But it is freely



admitted that there are sundry points of difference between the rights of a zemindar in Bengal and of a landowner in England; and those who study accuracy of expression, eschew these sort of comparisons as calculated, unless accompanied by the requisite qualifications and explanations, to introduce confusion into the discussion of a complicated subject like the present. The opponents of the zemindars, well versed in all the tactics of debate, have accordingly laid immense stress on the absence of perfect similarity between the landed rights of the Bengal zemindar and of the English landowner. But, if I may take the liberty of quoting from an article on the *Proposed New Rent Law for Bengal and Behar*, which appeared in the *Calcutta Review* for October, 1880,—“to say that the Bengal zemindar has not the *same* rights as the English landowner is to say nothing to the purpose. The English landowner, too, does not possess the *same* set of rights as the Bengal zemindar. The rights of each are defined by the law of the realm in which the land is situate. The English common law defines the proprietary rights of the English landowner. The same code which constituted the zemindar proprietor of the soil contains the restrictions to which *his* proprietary rights are subject.”

In the fourth place, it must be admitted that it *would* be “quite a mistake to suppose that, because a man who has a limited interest in land is called a proprietor and owner, therefore he becomes an absolute proprietor and owner, and is given an absolute fee-simple right to the land to do what he likes with it.” But, as I have already pointed out, the zemindar is not only described as proprietor of the soil



in the Bengal Revenue Code, but by the express provisions of the Code his right to the soil is unlimited in point of duration, unrestricted in point of disposition, and indefinite in point of user,—in one word, it is *dominion*, to use the phraseology of Roman law ; and if it were to be described in the phraseology of English law, it could not with propriety be described otherwise than as “an absolute fee-simple right to the land.”

In the fifth place, as regards the complicated and much contested question of land - tenures in India, it would be the height of presumption on my part to offer any positive opinion on that large and difficult question. But the Dyabhaga certainly seems to show that absolute property in land, vested in individuals as contradistinguished from families or village communities, existed in Bengal in the age of Jimutavahana. However that may be, the rights of the Bengal zemindars do not depend upon the determination of antiquarian controversies respecting land - tenures in India ; they depend principally upon the true construction of the Bengal Regulations, and so far as the unwritten law is concerned, upon that “new Code of Common Laws,”* to use Mr. Harington’s words, which “the usage of seventy or eighty years *had*, in a manner, established,” in Bengal, at the time when the Permanent Settlement was concluded.

In the sixth and last place, I beg most respectfully to point out that, in order to ascertain the amount of property which would be injuriously affected by the proposed legislation, it is not sufficient to know the

* Harington’s *Analysis*, Vol. III, p. 459.



ratio which the number of occupancy tenants bears to the entire number of tenants in Bengal ; it is necessary for that purpose to determine the aggregate quantity of land held by occupancy tenants. Occupancy tenants may, and as a matter of fact commonly do, hold, in addition to the lands in which they have a right of occupancy, other lands in which they have no right of occupancy ; and it may well be that ninety per cent. of the tenants of Bengal are occupancy tenants, but that the rights of the landlords of Bengal in more than one-half of the soil of the province are unaffected by occupancy rights. And, in conclusion, it may be noted that if, in forming the estimate of the proportion of occupancy tenants, intermediate tenants as well as cultivators of the soil or ryots proper, have been taken into account, the former would belong to the class of landlords and would be affected by the proposed legislation in much the same manner as the zemindars, independent talookdars, or other actual proprietors of the soil.

To resume again the thread of Mr. Ilbert's arguments. Having concluded his elaborate dissertation on the meaning of the term "proprietor of the soil," as applied to the zemindars in the Regulations of 1793, Mr. Ilbert proceeds to ask—"What then is the meaning of the formal declaration referred to in Regulation II of 1793, that the property in the soil was vested in the landholders, and of the statement in the same Regulation, that the property in the soil had never before been formally declared to be so vested ?" And after some remarks on the feudal tenure of English land and a reference to the controversy whether the share of the produce exacted by the British Government in the North-Western Provinces ought more pro-



perly to be denominated revenue or rent, this is the conclusion to which he comes as to what the declaration in the Bengal Regulation really meant :—" It (meaning the Government) said to the zemindars, we will not only fix for ever that share of the produce for the payment of which you are to be held responsible, but we will give up to you our claim to be considered your landlords. What you pay us shall be revenue, not rent. As between ourselves, you and not we shall be deemed to be the proprietors of the soil." So far, so good. Here we have it admitted that as between Government and the zemindars, at all events, the latter should be deemed to be the proprietors of the soil. " But," subjoins Mr. Ilbert, by way of qualifying this admission, " there were three things which the Government did not do by the Permanent Settlement. It did not divest itself of its general right—a right which belonged to it not as landlord but as Government—to make from time to time such laws and adopt such administrative measures as it might think expedient for the general welfare of all classes of its subjects : it did not define the nature and extent of the proprietary rights which it gave up to the zemindars ; and it did not include in its grant any proprietary or *quasi*-proprietary rights belonging, not to itself, but to some other class of persons."—(Supplement to the *Gazette of India*, March 3, 1882.) It would, of course, be absurd to say that the British Government, by making the Permanent Settlement, divested itself of the inalienable right of every Government to make laws and adopt administrative measures for the general welfare of all classes of its subjects ; but then it is also clear that no Government is justified, either in its legislative or in its



administrative capacity, to deprive one class of its subjects of their just rights of property for the sake of promoting the welfare of another class, the inevitable consequence of such injustice to any class of the community being a general insecurity and depreciation of the rights of all classes. And I have myself already observed in another connection that, as a matter of fact, the Permanent Settlement did not impair the proprietary or *quasi*-proprietary rights of any third parties, all such rights as existed at the time being carefully saved by the rules of the Settlement, which were afterwards enacted into Regulation VIII of 1793. But I confess I am entirely at a loss to understand how, in the face of the express provisions of that Regulation concerning the landed rights recognized and created by the Settlement, it can be contended that the Government did not define the nature and extent of the proprietary rights which it gave up to the zemindars.

“Nor is there any ground for the suggestion,” continues Mr. Ilbert, “that the occupancy rights, which at the time of the Permanent Settlement were—I will not say, saved, for they required no express saving but—left outstanding, included only the rights of those ryots who happened to be in occupation at the date of the Settlement. If there was at that time—as it seems abundantly clear that there was—an established custom or usage under which the resident ryots, that is to say, the great mass of the cultivators—for an agricultural population is essentially stationary in its habits—under which the resident ryots were entitled to hold at fixed rents, that custom or usage would, according to the ordinary principles applicable to the interpretation of

statutes, be unaffected by the legislation of 1793, and would protect not only those who had taken up lands before that date, but those who might take up lands at any subsequent date.”—(Supplement to the *Gazette of India*, March 3, 1883, p. 284.)

Mr. Ilbert says, that it seems abundantly clear that at the date of the Permanent Settlement there was an established custom or usage under which resident ryots were entitled to hold at *fixed rents*; but he cites no authority in support of this extraordinary assertion, which amounts to saying that every khodkasht ryot was an istemrardar. Tenants at a fixed rent are denominated istemrardars and declared to be a species of pottah talookdars in section 19 of Regulation VIII, 1793, and by section 49 of that Regulation, they were exempted from any increase of their fixed jumma at the formation of the decennial settlement, provided they had held their tenures at a fixed rent for more than twelve years antecedent to that period; whereas with reference to the ascertained rights and privileges of the khodkasht or resident ryots in Bengal, the same Regulation (clause 2, section 60) merely provides that no zemindar or farmer of land should cancel the pottahs of the khodkasht ryots except upon proof that they had been obtained by collusion, or that their rents had been reduced within the last three years below the rate of the nirkbundy of the pergunnah, or upon a general measurement of the pergunnah for the purpose of equalizing and correcting the assessment. The zemindar, however, was explicitly declared by section 52 of the Regulation referred to above, to be at liberty to let the *unoccupied* lands of his estate in whatever manner he thought proper, and consequently no new ryot

could take up lands without an agreement with the zemindar. The custom under which resident ryots were entitled to hold at *pergunnah* rates or at *fixed rents*, supposing, for the sake of argument, that the custom was to hold at fixed rents, was, therefore, inapplicable to leases made after the date of the Permanent Settlement. The grounds for holding that the condition and rights of those ryots whose tenures commenced since that date depend, not upon status, but upon contract, were so fully set forth by Sir Barnes Peacock in the case of *Isshur Ghose v. Hills*, that it is unnecessary for me in this place to do more than refer to the reported decision in that case (Suth. F. B. R., pp. 148, *et seq.*), and to add that this proposition of law was not controverted by the majority of the Judges in the Great Rent case, although they differed from Sir Barnes Peacock upon the question regarding the proper standard for determining *fair and equitable* rates of rent within the meaning of Act X of 1859. It is observed by Mr. Ilbert that, according to the ordinary principles applicable to the interpretation of statutes, the custom regulating the rents of resident ryots would be unaffected by the legislation of 1793. Doubtless it is a received maxim of statutory interpretation that special customs are not affected by general enactments, but where the intention of the legislature is clearly expressed, the maxim ceases to be applicable. Thus, it has been held in England, that the Dower and Inclosure Acts extend to gavelkind lands, though this local customary tenure is not expressly abolished by either Act.—(Maxwell's *Interpretation of Statutes*, p. 161.) And as regards Mr. Ilbert's observation that an agri-



cultural population being essentially stationary in its habits, the great mass of the cultivators at the time of the Permanent Settlement must have been resident ryots, it must not be supposed that the great mass of ryotty holdings at that time were, therefore, khodkasht tenures. The entire quantity of land in each village, which was cultivated by ryots residing in a different village, was in the category of pykasht land, with respect to which there was no right of occupancy whatever. As the Collector of Rajshye pointed out in a valuable report, dated 16th August 1811:—“*A ryot and his forefathers may have cultivated lands in an adjoining village for hundreds of years ; still, as far as regards the lands in that village, he could only be considered a pykasht ryot, and as such, a tenant-at-will.*”—(Bengal Revenue Selections, Vol. I, p. 241.)

The Hon'ble Major Baring contends that, upon the true construction of the Bengal Regulations, all ryots, whether khodkasht or pykasht, were entitled to hold at the established pergunnah rates. He says :—“ More-over, section 5 of Regulation IV of 1794 (1793 here is clearly a misprint), which was passed less than a year after the Permanent Settlement, prescribes that, after the completion of certain formalities, ‘pottahs according to the form approved, and at the established rates, will be immediately granted to all ryots who may apply for them.’ The ‘established rates,’ it is to be observed, apply under this Regulation to all ryots. No exception is made in respect to ryots who cultivate, or to ryots who might subsequently cultivate, the lands unoccupied at the time of the Permanent Settlement.”—(Supplement to the *Gazette of India*, April 21, 1883, p. 896.)



Section 5 of Regulation IV of 1794 was enacted for the ease of the zemindars ; it did not make it *obligatory* upon them to grant pottahs at the established rates to *all* ryots, but merely gave them the *option* of tendering such pottahs in order to entitle them to recover the rents specified therein by distraint or by suit in the Dewanny Adawlut ; and a mere notification, that such pottahs would be granted, was declared to be a legal tender thereof. It is true that section 7 of the same Regulation declares “that no proprietor or farmer of land, or any other person, shall require ryots, whose pottahs may expire or become cancelled under the last mentioned Regulation (No. XLIV of 1793), to take out new pottahs at higher rates than the established rates of the pergunnah for lands of the same quality and description, but that ryots shall be entitled to have such pottahs renewed at the established rates, upon making application for that purpose to the person by whom their pottahs are to be granted, in the same manner as they are entitled to demand pottahs in the first instance, by Regulation VIII, 1793.” But this section has been well explained by Mr. Field :—“The term ‘ryots,’” remarks Mr. Field (*Digest*, p. 206), “used thus generally might seem to imply that *all ryots* were entitled to have their pottahs renewed at the established *rates*. But this general sense is restrained by the words that immediately follow, *viz*:—‘in the same manner as they were entitled to demand pottahs in the first instance.’ Only the *khodkasht* ryots could claim not to have their pottahs cancelled, if they were paying the full rates according to the *nirkbundy*.” This is made still more clear by Regulation LI of 1795, which extended to Benares the provisions of Regula-

tion IV of 1794. Section 10 of the first mentioned Regulation runs as follows :—“ And it is declared that no proprietor or farmer of land, nor any other person, shall require ryots, whose pottahs may expire or become cancelled, to take out new pottahs at higher rates than the established rates of the pergunnah, for lands of the same quality and description ; due consideration being had, as far as may be required by the custom of the district, to the alteration of the species of culture, and the caste of the cultivator. *Under this rule, khodkasht or chupperbund ryots will be entitled to have their pottahs renewed at the established rates, upon making application for that purpose to the person by whom the pottahs are to be granted, as are also pykasht ryots, provided the proprietor or farmer chooses to permit them to continue to cultivate the land, which they have the option to do or not, as they may think proper, on the expiration of all pykasht leases ; whereas khodkasht ryots cannot be dispossessed as long as they continue to pay the stipulated rent.*”

Mr. Ilbert concludes his observations on the vested rights of the zemindars by saying—“ We have, indeed, been told that it was part of the bargain between the Government and the zemindars that the latter should not only be exempted from payment of revenue for lands which were then waste, but which might subsequently be taken into cultivation, but should be given full and absolute discretionary powers as to the mode of dealing with such lands, unqualified by any village custom or local usage. But it would require extremely strong and clear words to make an enactment conferring such powers,—an enactment which would be inconsistent with all Indian notions



as to the rights of a reclaiming occupier in the land which he brings under cultivation, and which would throw into, and keep permanently in, the category of khamar or private land the whole of the then vast area of the unreclaimed land of Bengal. It would require, I say, very strong and clear words to effect such a revolution, and I cannot, in any of the Regulations of 1793, find words on which such a construction could be placed.”—(Supplement to the *Gazette of India*, March 3, 1883, p. 284.)

Mr. Ilbert must have forgotten the oft-quoted words of section 52 of Regulation VIII of 1793,—that the zemindar is to let the remaining lands of his estate, under the prescribed restrictions, in whatever manner he may think proper,—when he said that he could not in any of the Regulations of 1793 find words on which such a construction could be placed. The truth is, as the Hon’ble Kristodas Pal has observed :—“ Lord Cornwallis fixed the revenue demand at ten-elevenths of the gross rental, and, *by way of compensation to the zamindars*, surrendered the waste lands to them.”—(Supplement to the *Gazette of India*, April 21, 1883, p. 837.) This is placed beyond all doubt by the express testimony of Lord Cornwallis himself. In a letter to the Court of Directors, dated 6th March, 1793, his Lordship, referring to the waste lands, wrote :—“ It is true that the lands in this desolate state far exceed what would suffice for the above purposes (meaning pasture for cattle, &c.), *but it is the expectation of bringing them into cultivation, and reaping the profit of them, that has induced many to agree to the decennial jummah that has been assessed upon their lands.*”—(Para. 15, Appendix No. 9, 2nd Report from Select Committee, 1810.)

Mr. Ilbert speaks of Indian notions as to the rights of a reclaiming occupier in the land which he brings under cultivation. But as well under Hindu as under Mahomedan law, those rights arise from the reclamation of *unappropriated* waste lands only. Thus Manu declares :—"Sages, who know former times, consider this earth (*Prithivi*) as the wife of King Prithu ; and thus they pronounce cultivated land to be the property of him, who cut away the wood, or who cleared and tilled it ; and the antelope, of the first hunter, who mortally wounded it."—(Chap. IX, para. 44.) The reclamation here spoken of evidently refers to the clearing and cultivation of *unappropriated* waste lands ; and it is very remarkable that the question as to the property in a mortally wounded wild beast was discussed by the Roman lawyers also, under the head of *occupatio*, or the acquisition of property by the taking possession of what belongs to nobody (*res nullius*) with the intention of making it one's own. In the Institutes of Justinian, the question is propounded, "whether, if you have wounded a wild beast, so that it could be easily taken, it immediately becomes your property ;" but, unlike the sages of the Hindu law, the Roman Emperor decides the question in the negative, and rules that the beast does not become your property until you have captured it.—(*Vide* Just. Inst. Lib. II, Tit. I, 13.) Again, in the Mitakshara of Vijnyaneswara, the text of Gautama is cited :—"An owner is by inheritance, purchase, partition, seizure or finding ;" and 'seizure' is thus explained :—"Occupation or seizure is the appropriation of water, grass, wood and the like not previously appertaining to any other person as owner."—(Mitakshara, Ch. I, sec. 1, paras. 12 and 13.) Vijnya-

neswara's recognition of *occupation* as an approved mode of acquiring property favours the construction which I have ventured to put upon the passage cited from Manu, which is the only passage in the Hindu law-books that I know of, bearing directly upon the question as to the rights arising from the reclamation of waste lands.

The Mahomedan law on the subject is perfectly clear. Mr. Baillie, in his *Land Tax of India*, writes :—"The law of India under the Mahomedans was the Haneefa Code, according to which waste land is so absolutely in a state of nature, that it may be acquired by the first occupant who reclaims or brings it into a state of cultivation;" and cites the following definition of *waste land* :—"Dead or waste land is land on the outside of a town for which there is no owner, nor any one who has a particular right to it."—(Baillie's *Land Tax of India*, pp. xxiii, 3, *et seq.*)

The waste lands were regarded as the property of the zemindars, even before the Permanent Settlement was concluded with them. In the letter to the Court of Directors, dated 6th March, 1793, from which I have already quoted one passage, Lord Cornwallis observes :—"It is necessary to apprise you (of what you could not have been aware) that all waste lands form a part of the estate of the different landholders, and the boundaries of the portions of these lands that belong to each individual are as well defined as the limits of the cultivated parts of their property, and that they are as tenacious of their right of possession in the former as the latter."—(Para. 13.) And in another part of the letter, his Lordship says :—"These lands, however, are not wholly unproductive to them (meaning the



zemindars) at present ; they furnish pasture for the great herd of cattle that are necessary for the plough, and also to supply the inhabitants with ghee (a species of butter) and milk, two of the principal necessities of life in this country."—(Para. 15.) It thus appears that, even before the Permanent Settlement, the waste lands in Bengal were not in the predicament of *res nullius*, and therefore not subject to the Indian law with respect to the acquisition of property by reclamation. Indeed this is directly and conclusively proved by section 8 of Regulation VIII of 1793, which has been already cited in another connection. That enactment shows that, before the Permanent Settlement, the zemindars were in the habit of disposing of the waste lands by way of *jungleboory* talooks ; that the *jungleboory* talookdar was not exempted by the custom of the country from the increases and abwabs imposed on the pergunnah generally ; that his under-tenants, the immediate cultivators of the soil, were in their turn subjected to the payment of the usual complimentary presents and fees ; and that his rights depended entirely on the terms of his pottah, or, in other words, on the terms of his contract with the zemindar. It follows *a fortiori* that, since the date of the Permanent Settlement, when the zemindars were explicitly declared by the Legislature to be the actual proprietors of the waste lands situated within the boundaries of their estates, no ryot can, by merely clearing and cultivating such lands, acquire any proprietary rights therein, under the Hindu or the Mahomedan law, any more than under the Regulations and Acts of the British Government. It is clear that, since that date, a ryot can acquire proprietary rights in the waste lands



only by virtue of contract with the zemindar within whose estate such lands are situated, or by continuous adverse possession against the zemindar for the statutable period requisite for the growth of a title by prescription. As Sir Barnes Peacock observed in the case of *Isshur Ghose v. Hills*:—"It is clear that a ryot cannot at the present day, by merely entering upon land belonging to a zemindary, and bringing it into cultivation, become the proprietor of the soil. The zemindar may lose his right by the operation of the Statute of Limitations, and the right to the soil may thus be acquired by the ryot. But, in cases in which there is no contract, and to which the Statute of Limitations does not apply, the ryot cannot, by occupying and cultivating, become the proprietor of the soil. Neither can he, by occupying with the consent of the zemindar and paying rent for the land to him, become entitled to the proprietorship of the soil, even though he should acquire a right of occupancy by virtue of Act X of 1859."—(Suth. F. B., p. 157.) It is also not irrelevant to state that when the principles of the Bengal Permanent Settlement were extended to Benares, in pursuance of an agreement with the Rajah of Benares, by which the Governor-General in Council was empowered to "introduce the same system and rules for the concerns of the revenue, as were, in 1793, established within the provinces of Bengal, Behar and Orissa" (*Fifth Report*, p. 57), it was expressly laid down in Regulation II of 1795 that the rent of waste land intended to be brought into cultivation should be fixed at such rates as the ryots might willingly agree to pay, and without *abwab* (*vide* sec. iii, cl. 3). And it will be recollected that the Marquis of Hastings regarded



this point as absolutely free from doubt,—“it was also *doubtless* intended,” observed his Lordship, “to recognize the full property of the zemindars in unclaimed waste lands lying within the limits of their mehals.” Indeed it should seem as if Mr. Ilbert himself had some misgiving as to the correctness of his opinion on this question, for in the same breath in which he emphatically denies the right of the zemindars under the Permanent Settlement to deal with the waste lands in whatever manner they thought proper, he observes :—“And even if any such right had been conferred, it would have been controlled and qualified by the express reservation of a power to legislate from time to time for the protection of the cultivators of the soil.”—(Supplement to the *Gazette of India*, March 3, 1883, p. 284.) What, then, is the true meaning of this reservation ?

II.—The power, which Government reserved to itself to enact, from time to time, regulations for the protection and welfare of the dependent talookdars and the cultivators of the soil.

In the *Statement of Objects and Reasons*, published as an annexure to the *Bengal Tenancy Bill*, 1883, Mr. Ilbert writes :—

“Immediately before the Permanent Settlement was made, the Court of Directors, in conveying instructions to the Government here regarding it, wrote as follows :—

‘In order to leave no room for our intentions being at any time misunderstood, we direct you to be accurate in the terms in which our determination is announced.

. You will, in a particular manner, be cautious so to express yourselves as to leave no



ambiguity as to our right to interfere, from time to time, as it may be necessary, for the protection of the ryots and subordinate landlords, it being our intention, in the whole of this measure, effectually to limit our own demands, but not to depart from our inherent right as sovereigns of being the guardians and protectors of every class of persons living under our Government.'

2. In conformity with these instructions, an article was inserted in section 8 of Regulation I of 1793, by which the Permanent Settlement was effected, expressly saving the right of the Government to legislate for the protection of persons having interests in the soil below those of the zemindars. It need hardly be said that any such saving was, strictly speaking, superfluous, inasmuch as the Government of an agricultural country like India would, apart altogether from it, be entitled, or rather bound, to legislate from time to time, as occasion might require, for the protection of the inferior occupants of the soil. But the article is important as showing that the view taken of the relations between the Government, the zemindars and the inferior landholders under the Permanent Settlement was the same in 1793 as it is to-day. The article runs as follows :—

'To prevent any misconstruction of the foregoing articles' (fixing the Government revenue for ever) 'the Governor-General in Council thinks it necessary to make the following declarations to the zemindars, independent taluqdars, and other actual proprietors of land :—*First*, it being the duty of the ruling power to protect all classes of people, and more particularly those who, from their situation, are most helpless, the Governor-General in Council will, whenever he may deem it proper, enact such regulations as he may think necessary



for the protection and welfare of the dependent taluqdars, ryots and other cultivators of the soil ; and no zemindar, independent taluqdar or other actual proprietor of land shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay.'

3. 'Again, it was enacted by section 67 of Regulation VIII of 1793 (a Regulation re-enacting, with modifications, the rules for the Decennial Settlement) that proprietors should be bound by the restrictions in their kabuliyats, and the 9th of these, as stated by Mr. Harington (Vol. II, p. 255), was that implicit obedience be shown to all regulations which have been or may be prescribed by Government concerning the rents of the ryots and the collections from undertenants and agents of every description, as well as from all other persons whatever.'"—(See also Supplement to the *Gazette of India*, March 3, 1883, p. 271.)

Section 67 of Regulation VIII of 1793 enacts that,—"Such of the restrictions on actual proprietors of land, and farmers who hold their farms immediately of Government, as are set forth in their respective kabuliyats, *and are not repealed by any Regulation printed and published in the manner directed in Regulation XLI, 1793*, are to be considered in full force." Mr. Ilbert, it will be observed, does not at all allude to the clause which I have italicised. That clause, however, is important as showing clearly that the intention of the Legislature was, that only such restrictions in the kabuliyats of the zemindars should remain operative, as were not inconsistent with the express enactments touching their rights contained in the Regulations passed by the Governor-General in Council. It might



therefore be very reasonably argued on behalf of the zemindars that even if the 9th clause of their kabuli-yats were exactly such as Mr. Ilbert represents it to have been, that clause would be controlled and qualified by the express enactments with respect to the rights conferred on them by the Permanent Settlement, which are contained in Regulation VIII of 1793, and other Regulations on the subject printed and published in the manner directed in Regulation XLI, 1793 ; so that it would be open to them to contend that Government would not be justified in passing any Regulation "concerning the rents of the ryots and the collections from undertenants and agents of every description," which would tend to infringe the rights vested in them by the Permanent Settlement Regulations. But apart from this, the 9th clause itself contains very important qualifications which it is simply astonishing that Mr. Ilbert should have altogether omitted. That clause is thus set out *in extenso* in Harington's *Analysis*, Vol. II, p. 255:—

"That implicit obedience be shewn to all regulations, which have been, or may be prescribed by Government, concerning the rents of the ryots, and the collections from undertenants and agents of every description, as well as from all other persons whatever ; *the fullest confidence being entertained, that all such regulations will be consonant to equity, and for the general benefit of the community.*"

I take leave to repeat that it is simply astonishing that Mr. Ilbert should have overlooked the relevancy of the words which I have italicised. Those words being left out, it may be very plausibly contended, as Mr. Ilbert apparently means to contend, that by the



9th clause of their own engagements with the Government, the zemindars are precluded from making any objection to whatever regulation Government may choose to enact "concerning the rents of the ryots, and the collections from undertenants and agents of every description." But upon the true construction of the whole of that clause, including the words omitted by Mr. Ilbert, it is manifest that, having regard to the contract between the zemindars and the Government, the latter would not be justified in making any regulation "concerning the rents of the ryots and the collections from the undertenants and agents of every description," which, besides being conducive to the general benefit of the community, should not be equitable in relation to the zemindars. And it requires no argument to prove that a regulation, which should deprive the zemindars of the rights vested in them under the Permanent Settlement without offering due compensation for the loss of such rights, would not be consonant to equity.

The article inserted in the Proclamation relative to the Permanent Settlement (which was afterwards enacted into clause 1, section 8, Regulation I of 1793), in conformity with the instructions of the Court of Directors, merely gave legislative sanction to the provision contained in this clause of the engagements of the zemindars. In replying to the letter of the Court of Directors which conveyed those instructions, Lord Cornwallis wrote:—

"We shall be particularly careful that the notification (meaning the Proclamation relative to the Permanent Settlement) is drawn up in the manner you prescribe, and that the terms of it be calculated to impress the



landholders with the value and importance of the rights conferred upon them, and of your solicitude for their welfare and prosperity. We shall likewise, to prevent any future misconception, expressly reserve to you the right of establishing and collecting any internal duties that you may hereafter think proper to impose ; and also declare your determination to assess all alienated or rentfree lands that may hereafter revert to Government, or be proved, after a regular trial in a Court of Justice, to be held under an invalid tenure. We shall further declare (*although a clause to that effect has been inserted in the engagements with the landholders*) that you do not mean, by fixing the public demand upon the lands, to debar yourselves from the exercise of the right inherent in you as sovereigns of the country, of making such regulations as you may occasionally think proper for the protection of the ryots and inferior landholders or other orders of people concerned in the cultivation of the lands."—(Para. 23 of Letter from the Governor-General in Council at Bengal, dated 6th March, 1793.)

The clause in the engagements of the zemindars alluded to by Lord Cornwallis cannot be any other than the 9th, for no other clause in those engagements refers to the making of regulations by the Government concerning the ryots ; and his Lordship says in so many words that the declaration in the notification relative to the Permanent Settlement about the right of Government to make, from time to time, regulations for the protection of the ryots and the inferior landholders (which was afterwards enacted into clause 1, section 8, Regulation I of 1793) was to the same effect as this 9th clause in the engagements of the zemindars. It



thus appears that clause 1, section 8, Regulation I of 1793 was understood by Lord Cornwallis as being identical in its meaning and intention with the 9th clause in the kabuliyats of the zemindars ; and consequently the clause in the Regulation, according to his Lordship's authoritative construction of it, cannot, any more than the clause in the kabuliyat, be pleaded in justification of any proposed regulation "concerning the rents of the ryots," &c., or "for the protection and welfare of the dependent talookdars, ryots," &c., which should be inequitable in relation to the zemindars. The zemindars subscribed their kabuliyats, "entertaining the fullest confidence that all such regulations would be consonant to equity, and for the general benefit of the community ;" and, as I have already said, it would be a mockery to characterize as *equitable* to them any regulation which should deprive them of their vested rights under the Permanent Settlement without offering any compensation for the same ; not to insist upon the argument that a regulation which operates as an instrument of injustice to one class of the community must be, in the long run, inconsistent with the true interests of the community in general.

That upon the true construction of clause 1, section 8, Regulation I of 1793, it does not justify the making of regulations for the protection and welfare of the dependent talookdars and the ryots, which should infringe the rights vested in the zemindars under the Permanent Settlement, is also apparent from the declaration in the preamble to Regulation II of 1793 that—"no power will then exist in the country by which the rights vested in the landholders by the regulations can be infringed, or the value of landed property affected."

Referring to this declaration, the Hon'ble Major Baring observes :—

“It has, however, been urged that Regulation II of 1793, which was passed on the same day as Regulation I, qualifies the reservation in section 8 of Regulation I. This argument is based upon the fact that the preamble to Regulation II of 1793, after dwelling on the expediency of abolishing the Courts of *Mál Adálat* or Revenue Courts, and transferring the trial of suits which were cognizable in those Courts to the Courts of *Diwani Adalat*, goes on to say that—‘no power will then exist in the country by which the rights vested in the landholders by the Regulations can be infringed, or the value of landed property affected.’

“I must confess that I altogether fail to see how the language thus used in Regulation II qualifies the legislative power expressly reserved by Regulation I on behalf of dependent taluqdars, ryots and other cultivators of the soil. If the whole of the preamble to Regulation II of 1793 be read, the intention of the Legislature becomes perfectly clear. Prior to 1793, rent and revenue suits had been tried in what were then known as the *Mál Adálat* or Revenue Courts. In these Courts Collectors of revenue presided as Judges. It was pointed out in the preamble to the Regulation that—‘the proprietors can never consider the privileges which have been conferred upon them as secured whilst the Revenue-officers are invested with these judicial powers. . . . The Revenue-officers must be deprived of their judicial powers.’

“Further, these officers were to be rendered amenable to the Courts of judicature.

“When this was done, the Regulation went on to

indicate :—‘No power will then exist in the country by which the rights vested in the landholders can be infringed or the value of landed property affected.’

“In point of fact, it is quite clear that the sole intention of the Legislature was to give further security to the zemindars in respect to the permanency of their revenue assessment by a separation of judicial and executive functions, instead of allowing them to be united in the same individuals as was heretofore the case. The explicit reservation made in Regulation I of 1793 does not, therefore, appear to be in any way qualified by the provision enacted in Regulation II.”—(Supplement to the *Gazette of India*, April 21, 1883, p. 895.)

The Hon'ble Major Baring says that he altogether fails to see how this declaration in Regulation II qualifies the legislative power reserved by Regulation I on behalf of dependent talukdars, ryots and other cultivators of the soil. The advocates of the zemindars, however, never contended that the declaration in Regulation II qualified or limited in anywise the legislative power which was really reserved by Regulation I according to the true construction of that reservation. What they contend for is, that the declaration clearly shows that the legislative power reserved by Regulation I does not justify interference with the vested rights of the zemindars, for if the Legislature intended that it should authorize such interference, they would not have declared in the most unqualified terms that *no power* would exist in the country by which such interference could be effected. The preamble to Regulation II says,—“Government must divest itself of the power of infringing in its executive capacity the rights



and privileges which, as exercising the legislative authority, it has conferred on the landholders ;” and after showing that Government in its executive capacity will not possess this power when the revenue-officers shall have been deprived of their judicial powers, and rendered amenable for their acts to the Civil Courts, it concludes with the declaration that “no power will *then* exist in the country”—not merely that no *executive* power will then exist in the country, but absolutely “*no power* will then exist in the country by which the rights vested in the landholders by the regulations can be infringed or the value of landed property affected.” It is obvious that this conclusion would be illegitimate,—this general declaration would not be true, if, when Government deprived itself by Regulation II of the power of infringing in its executive capacity the vested rights of the zemindars, it retained under Regulation I the power of interfering with those rights in its legislative capacity.

The true meaning and intent of the reservation in Regulation I, was well explained by the Court of Directors in their Revenue Letter to Bengal, dated 12th July, 1820, in which they observed that, “*in enacting the perpetual settlement, Government reserved to itself (that of which no Government can lawfully divest itself) all the powers necessary for maintaining justice between one class of its subjects and another.*”—(Bengal Revenue Selections, Vol. III, p. 22.) Mr. Ilbert observes, that “the two main objects at which our legislation should aim, are :—1st, to give reasonable security to the tenant in the occupation and enjoyment of his land ; and 2ndly, to give reasonable facilities to the landlord for the settlement and recovery of his rent. That both of these are legitimate



objects of legislation no one will be found to deny. But we have been told that whilst there is no reason in the world why we should not effect the one, there is a serious obstacle in the way of our effecting the other. *We may legislate to enlarge the powers of the landlord, but we cannot legislate to enlarge the rights of the tenants.*"—(Supplement to the *Gazette of India*, March 3, 1883, p. 282.) No, it is submitted, you cannot legislate to *enlarge* the 'powers' of the landlord, if by 'powers' you mean substantive rights, any more than you may legislate to *enlarge* the rights of the tenants. Whether you profess to legislate by virtue of the powers inherent in you as sovereigns of the country, or in conformity to clause 1, section 8, Regulation I of 1793, which, according to the authoritative interpretation of the Court of Directors, merely reserved to you in express terms those inalienable sovereign powers, you may neither enlarge the rights of the zemindars at the expense of the ryots, nor the rights of the ryots at the expense of the zemindars ; but you may, and should, legislate for the purpose of maintaining justice between the one class of your subjects and the other, for the purpose of enabling zemindars and ryots alike to enjoy in security the substantive rights in the soil respectively belonging to them under the Permanent Settlement. Legislation for enlarging the substantive rights of either class must necessarily involve injustice to the other, but it is obvious that legislation in favour of either class for enlarging their 'powers' of vindicating those rights cannot furnish any reasonable ground for complaint to the other.

In conformity to the Court of Directors' construction of clause 1, section 8, Regulation I of 1793, Mr. Harrington proposed, in 1826-27, a regulation "*for maintain-*



ing the rights of khodkasht, chupperbund, and other resident ryots, who by prescriptive usage are entitled, on certain conditions, to the permanent occupancy of the lands cultivated by them, within the limits of the village in which they reside." Mr. Harington did not profess to legislate for the purpose of *enlarging* the rights of the ryots in general,—he only proposed to make more effectual provisions for *maintaining* the existing prescriptive rights of the khodkasht, chupperbund and other *resident* ryots, properly so-called. The language of his draft regulation, however, was none of the clearest; it was susceptible of a construction under which resident ryots might claim *larger* rights than they ever possessed; and accordingly, on the recommendation of the Judges of the Sudder Dewanny Adawlat, it was very properly abandoned by the Government of the day. In the Minute which Mr. Ross, the Fifth Judge of the Adawlat, wrote upon the proposed regulation, he observed:—

"The *declaratory clauses* of the proposed regulation appear to me to be superfluous. They contain merely a declaration to the effect that nothing in the regulations in force relative to the rights and powers of zemindars and other superior landholders, and to the rights and privileges of dependant talookdars and hereditary ryots or cultivators of the soil, was designed to define, limit, or prejudice the actual rights of any of those classes,—a declaration which can hardly be deemed necessary, and which would give no greater security to actual rights than the laws already enacted afford.

"The *enacting clauses* of the draft are intended to secure the rights of two classes of ryots, namely,



istemrardars or holders of tenures subject to a fixed rent in perpetuity, and khodkasht and all other permanent or resident ryots who are not istemrardars. The first class, or the istemrardars, are only particularly referred to in the third clause of section 7, and that clause is expressed in the following words:—
' Provided also, that no istemrardar or tenant at a fixed rent, who, having held his tenure at a fixed rent for a period more than twelve years, was exempted from any increase of assessment by the rules of the Permanent Settlement of Bengal, Behar and Orissa, nor any similar undertenant, who without any special lease or limited assignment may have actually and *bonâ fide* possessed his istemrary tenure for the same period, and at a fixed and invariable rent, in any of the provinces under the presidency, shall be liable to enhancement of rent for lands included in the same tenure.'

" The plain meaning of these words is, that occupancy by a resident ryot of the land cultivated by him for a period of twelve years, at an invariable rent under an istemrary title, shall be held to be sufficient proof of the tenure being actually istemrary, although no lease or written document be forthcoming in support of the title. But a rule to that effect would give no greater security to the actual istemrardars to whom it refers, than they already derive from the rules in force as to the limitation of time for the cognizance of claims generally in the Civil Courts, and on that consideration the clause, if enacted as it now stands, would probably be construed by the Courts as intending to confer an istemrary right upon every resident ryot who had been allowed (although without title) to occupy the lands cultivated by him for twelve years, at a rent which had



not varied during that period,—a construction which could not fail to be productive of injustice to the zemindar, by encouraging their ryots to claim rights which they had never actually possessed, and which they had never been considered to be entitled to.”

And as regards the rights of resident ryots generally, Mr. Ross made the following valuable observations :—

“ That all resident ryots are entitled, according to the ancient law and custom of the country, to occupy the lands they cultivate, so long as they continue to pay certain established rates of rent, as is assumed in the preamble to the proposed regulation, is, I think, also questionable : such a right is not claimed, I believe, by mere ryots, whether resident or non-resident, in the Upper Provinces ; and if claimed in the Lower Provinces, it could not, I apprehend, be established by a reference to either the ancient law or the ancient custom of the country. It would be difficult to show when the law referred to was in force ; and if it ever was in force, it would be still more difficult to prove that it intended to confer upon mere cultivators a right to derive any greater advantage from the cultivation of the lands allotted to them than that for which they first undertook to cultivate the allotment ; in other words, a right to share in the increasing value of lands—a right which the privilege of continuing to cultivate the same allotment at fixed rates of rent would really amount to. As to the custom of the country, it has always been opposed to such a privilege, it being notorious that the zemindar and other superior landholders have at all times been in the practice of exacting from their ryots as much as the latter can afford to pay.”

Similar views were forcibly expressed in the minute



recorded by the Senior Judge, Mr. Leycester, who wrote:—

“ I am of opinion that this draft of a regulation, if passed into a law, will not be likely to produce any beneficial practical result ; and though it may be admitted that our system has always professed regard for the interests of the actual cultivators of the soil, I do not think it ever contemplated the placing of that class of people into the situation, and vesting them with the privileges of dependent talookdars. Express provision was made for the security of the rights of the latter, and for maintaining them in the possession of their hereditary tenures as long as they paid a fixed and ascertained annual revenue, while for the former all that was said, and the whole of which has been a dead letter from the first enactment up to the present day, is contained in the declaration that they were entitled to a renewal of their leases agreeable to the rates of the per-gunnah, that is, with reference to seven-eighths of the country, entitled to a renewal of leases that never existed, and at rates that never were known. The regulation too would, I think, generate extravagant pretensions which never would be realised . . . ; at the same time too, nothing new is enacted, nothing new is even professed. It might, perhaps, be supposed innocent on that account. But it is the putting groundless notions and unfounded pretensions into people's heads that would produce the evil That every cultivator resident in the village has, by the customs of the country, a right to transmit his tenure to his heirs from generation to generation at any known rate of adjustment of rent payable by him, is a doctrine I should be slow to believe ; indeed, this is not even professed. It is

only said that those who have such right shall be supported in it. Is there any doubt about this, was it ever expressed by any public functionary either in words or in effect ? True, you have such right, but you shall not be supported in it."

Mr. Leycester also bore witness to the moderation and leniency of the zemindars. "The fact is," he observed, "that the zemindars are not at all prone to eject their ryots. We have heard clamours on the subject of extensive ejectments of the peasantry in the northern part of our own country, but never that I know of in India." Mr. Leycester evidently referred to the "Clearing of estates" in the Highlands of Scotland, which was effected by British landowners towards the close of the last, and in the early part of this, century. Some idea of the operations euphemistically described at the time by the name of "Clearing of estates" will be obtained from the fact that, between 1814 and 1820, the Duchess of Sutherland alone drove out more than three thousand families, and transformed 800,000 acres of land, which formerly belonged to the clan, into seigniorial domain, driving out men to make room for sheep. George Ensor, in a work published in 1880, says :— "They (the landed proprietors of Scotland) dispossessed families as they would grub up coppice-wood, and they treated villages and their people as Indians harassed with wild beasts do, in their vengeance, a jungle with tigers. . . . Is it credible that in the eighteenth century, in this missionary age, in this Christian era, man should be bartered for a fleece or a carcase of mutton, nay, held cheaper ? . . . Why, how much worse is it than the intention of the Moguls, who, when they had broken into the northern provinces of China, proposed in council to



exterminate the inhabitants, and convert the land into pasture ! This proposal many Highland proprietors have effected in their own country against their own countrymen.”—(George Ensor’s *Inquiry into the Population of Nations*, pp. 215, 216, quoted in Laveleye’s *Primitive Property*, p. 262.)

To resume the consideration of the legislative power reserved to the Government of India by Regulation I of 1793. The subject was much discussed by the Select Committee of the House of Commons on the Affairs of the East India Company, in 1832. Mr. Holt Mackenzie was one of the witnesses examined by the Committee. Asked to state his views with respect to the right of Government to interfere between the zemindar and the ryot, Mr. Holt Mackenzie said :—
“ *The right of interference is clear, and has indeed been specifically reserved ; and in many cases, I doubt not, the rules against arbitrary enhancement of rent would enable us, in making a settlement with the ryots, unquestionably to restrict the zemindar’s demand within such bounds as would leave the former a property of value in their fields. But in other cases the question will arise how far, the Government having assigned to the zemindars a right which, if strictly enforced, will swallow up the property of the inferior tenantry, we can now come and proceed on general principles to limit that right. If done without their consent, we must, I apprehend, interfere by a new law, and be prepared to give the zemindars compensation, or allow a reduction of revenue.*”—(Minutes of Evidence, Vol. III, Revenue, p. 314, Q. 2673.)

Similar sentiments were expressed by many other witnesses examined by the Committee,—witnesses who



were all entitled, by their knowledge and experience, to pronounce with authority upon the subject.

The Committee, having concluded their laborious and extended inquiries, reported as follows :—

“ So long as the zemindar pays his fixed assessment, the Government have not yet interfered to regulate the cultivator's rates ; but where arrears accrue, and a public sale of the zemindary tenure, as prescribed by the Regulations, takes place, except the sacrifice on account of purchase-money is very great, the Authorities at Home have directed every zemindary tenure ‘ to be purchased on the part of the Government, and then settled with the ryots on the ryotwar principle.’

“ This order it appears has, as yet, had little practical effect in the Bengal Presidency, where it was at first opposed by the Local Authorities.

“ Although such purchase and resumption of the right to manage the land-revenue is the best mode for the Government to acquire the power of effectual interference in behalf of the ryots, the sacrifice of money requisite for the purpose would be so great as to impede the working of the system, if the sales of zemindaries, for default of payment, were numerous and extensive ; and *unless the Government should, either by public or private purchase, acquire the zemindary tenure, it would, under the existing regulations, be deemed a breach of faith, without the consent of the zemindars, to interfere directly between the zemindars and the ryots for the purpose of fixing the amount of the land-tax demandable from the latter under the Settlement of 1792-3.*”

The Report then proceeds to notice a mode of settlement which had been recommended by Mr. A. D. Campbell, a distinguished Madras Civilian, in an able



paper on the Land-revenue furnished to the Committee.

“It is, at the same time, suggested (amongst other important and valuable considerations, in an able paper on the Land-revenue which has been furnished to your Committee by Mr. A. D. Campbell, late a Collector, under the Madras Presidency) that without altering the existing law, which renders the zemindary tenure saleable for arrears of jumma, it might be expedient, in practice only, to suspend such sale, and on an arrear accruing, merely to attach and continue the attachment of the Land-revenue, as in the case of the ancient zemindaries under the Madras Government; but it is recommended that in all such cases of suspended sales, the Government authorities should be empowered to effect a fair and equitable settlement between the zemindars and the *resident* ryots, founded upon the peculiar tenures and local usages of each district.”

Mr. Campbell did not make any proposal,—like those in vogue just now,—for wholesale interference with zemindars' rights in the interests of ryots in general, whether khodkasht or pyekasht; his proposal, besides being confined to cases in which the zemindary was liable to be sold for arrears of Government revenue, was limited to the making of a fair and equitable settlement with the khodkasht ryots alone, and that according to the peculiar tenures and local usages of each district. But, however moderate Mr. Campbell's plan may have been, it unquestionably interfered, so far as it went, with the rights vested in the zemindars under the Permanent Settlement. Accordingly, the Select Committee of the House of Commons, it will be observed, carefully refrained from positively recommending Mr. Campbell's

plan,—they merely described the plan recommended by Mr. Campbell as one deserving of consideration, but for their own part they stopped short of actually seconding his recommendation. The fact of the matter is, that the Committee had interrogated Mr. James Mill (who was one of the witnesses examined by them) regarding the propriety of a plan devised by the Court of Directors, which was similar, in point of principle, to Mr. Campbell's plan; and that high authority, notwithstanding his well-known philosophical prejudices against the institution of landowning on a large scale in any quarter of the world, had declared that the plan in question would, if carried into execution, inflict injustice on the zemindars and involve a breach of the law of the Permanent Settlement. The questions and answers to which I refer were the following :—

“ Q. Has it not been under the consideration of the Court of Directors whether this plan might not be adopted, namely, for the Government, in the case of defaulters, before they put up the estate to public sale, to ascertain in the best mode possible, by survey, the exact rights of the ryots; and having ascertained and defined those rights, then to put up the estate to any bidder, subject to the observance of those rights ?

A. Such a scheme has been under their consideration, but I believe no order has been passed upon it.

Q. Would not that scheme as effectually retain the rights of the ryots, and at the same time preserve the professed objects of the Regulation of 1793 ?

A. It might afford protection to the ryots, but the objection that occurs to me upon it is, that we could not take this course without an infringement of the law of the Permanent Settlement. If the zemindars now



hold their land without any restraint respecting the terms they impose upon their undertenants, the zemindar upon whom Government, previous to a sale, should impose the restraint of terms, would be placed under a peculiar disadvantage, in a situation more unfavourable than that of other zemindars, holding under the Permanent Settlement, who are exempt from restraint.

Q. Does that answer apply to the case of a defaulting zemindar, whose estate is sold in consequence?

A. I consider that such a limitation imposed upon such a sale must of necessity reduce the value of the estate; nobody will bid so high for the estate under an idea of being bound by those terms to the ryots, as they would pay for it if they were not to be so bound.”
—(Minutes of Evidence, QQ. 3167—69.)

Mr. James Mill, however, cordially approved of the other plan of the Court of Directors, which is referred to in the Report of the Select Committee of the House of Commons,—I mean the plan of purchasing zemindaries on the part of the Government and then settling with the ryots on the ryotwar principle. He was of opinion that this was the only plan perfectly reconcilable with the faith of Government to those whom they constituted proprietors by the Permanent Settlement; he characterized it as unexceptionable, and said that it required only time for the full benefit of it.—(Minutes of Evidence, QQ. 3145, 3166, 3170.)

I shall conclude this dissertation on the power of Government to interfere between the zemindars and the ryots in Bengal, by saying a few words on the observations which His Excellency, the President of the

Supreme Council, made on this subject. His Excellency said:—

“ But then the preliminary objection is often taken that, on a wide view of this question, the Government and the Legislature have no right to interfere between the zemindars and the ryots in Bengal. Now, I was much struck by the line which was adopted by my hon'ble friend, Mr. Kristodas Pal, in regard to this branch of the question. He did not urge directly that the Government (and by the Government I mean both the Executive Government and the Legislature—the Government in its largest sense) is not entitled, in consequence of the Permanent Settlement, to deal with the question at all.”

His Excellency then pays a merited compliment to the Hon'ble Kristodas Pal's skill in debate, and quotes the words of clause 1, section 8, Regulation I of 1793, after which he proceeds to observe:—

“ Now, as it seems to me, nothing can be clearer or more precise than that language. In those days, in many public documents, clearness and precision of language was frequently wanting; but I do not think that the most able draftsman in the world could easily have devised language which is more perfect and more absolutely clear than that which is contained in this passage. And it appears to me that that passage dispels at once all idea that the Permanent Settlement prevents the Government from coming to the assistance of the tenants. I hold, on the contrary, that it shows that the Government, in 1793, gave to the ryots and all the cultivators of Bengal a distinct and binding assurance that they should look to them for protection and for the promotion of their welfare. It appears to



me that under these words Government gave a distinct pledge that they would protect the ryots and promote their welfare.”—(Supplement to the *Gazette of India*, April 21, 1883, pp. 930-31.)

Let the Government, by all just means, redeem their pledge,—let them protect the ryots and promote their welfare as much as they can; but the true question is,—are they justified under clause 1, section 8, Regulation I of 1793 to make any law for those laudable purposes which would deprive the zemindars of the rights of property vested in them? or, to use Mr. Ilbert’s phrase, are they justified in legislating for the purpose of *enlarging* the rights of the ryots,—an operation which the most consummate skill in law-making cannot effect without *lessening* at the same time the just rights vested in the zemindars? That the words of clause 1, section 8, Regulation I of 1793, rightly understood, do not countenance any construction which should justify such legislation, is abundantly clear from the arguments and authorities which have been adduced above, and which it is unnecessary to repeat in this place. But the important proposition implied by the observation parenthetically made by his Excellency—“*and by the Government I mean both the Executive Government and the Legislature—the Government in its largest sense*”—calls for some remarks. If I understand the bearing of that observation aright, His Excellency would seem to maintain that the Government in its executive capacity is entitled to interfere between zemindars and ryots in Bengal. This proposition, however, directly contradicts one of the fundamental principles of the Bengal zemindary system. The Court of Directors, in their Despatch regarding the formation



of the Permanent Settlement, expressly directed, "that when the tribute of each zemindar is fixed, he shall remain undisturbed in the administration and enjoyment of his estate, and be assured that as long as he pays his stipulated revenue, he shall be subject to no scrutinies or interposition of the officers of Government, unless where a *judicial* process may become necessary to adjust claims between him and tenants, or talookdars, or copartners of the same zemindary."

—(*Vide* Shore's Minute of June, 1789, para. 473.) And it will be recollected that in the preamble to Regulation II of 1793, it is explicitly declared, that "Government must divest itself of the power of infringing in its *executive* capacity the rights and privileges which, as exercising the legislative authority, it has conferred on the landholders." Again, in 1801, shortly after the formation of the Permanent Settlement, one of the famous interrogatories (the 16th) circulated by the then Governor-General of India, Lord Wellesley, and to which an answer in the affirmative was evidently desiderated by His Excellency, was:—"Are you of opinion that the inhabitants in general of the division under your jurisdiction consider their private rights and property to be secured by the present constitution of the country against infringement, either by the executive officers of Government, or *even by the supreme executive authority itself*, or by individuals?"—(*Fifth Report*, Vol. I, p. 673; Mad. Edn., 1883.) And it has been seen that the Select Committee of the House of Commons on the affairs of the East India Company reported in 1832 that, "unless the Government should, either by public or private purchase, acquire the zemindary tenure, it would, under the existing regulations,